It is submitted that this interpretation in requiring the landlord to make the premises fit for the particular business for which they are occupied, goes as far beyond the words of the statute, as the interpretation given by the District Court of Appeal falls short.

The cases supporting the view of the latter court are not satisfactory. In the earliest case, Edmison v. Asleben,[7] the rule is enunciated with no discussion; while a later case [8] in the same State holds that facts similar to those in the Edmison case do not show that a dwelling house was either dilapidated or unfit for the occupation of human beings; so that the facts of the pioneer case in Dakota would seem not to have required the broad ruling there given. The Montana case [9] merely quotes the decision of the Dakota court by way of dictum. In the Oklahoma case,[10] the court confesses a leaning toward the doctrine of the California Supreme Court, but feels itself bound by the Dakota construction, because the Oklahoma statute was adopted from the Dakota code. H. C. K.

Mining Law—Excessive Location—Insufficient Marking.—In the case of Madiera v. Sonoma Magnesite Company,[1] the plaintiff located a magnesite lode claim in a brushy gulch . On account of the roughness of the country and his lack of proper surveying instruments, he was compelled to "step off" the claim. This method of measurement resulted in the marking of a location in the shape of an irregular quadrilateral having one side line over 2000 feet long, and the other 1700 feet in length, while one end line was more than 800 feet long, and the central lode line was 1600 feet in length. Notices were posted where the discovery was made and also at two corners of the claim. When the defendants located their claims, one year later, the notices had been destroyed and the monuments were not to be found. The District Court of Appeal for the First District, in affirming the judgment of the lower court, held that plaintiff's claim was void because it had been insufficiently marked on the ground.

The most interesting point in the case is the court's suggestion that the claim would not have been void because of the excess ground unintentionally included in the boundaries, but would have been valid, except as to the excess. This liberal rule is the prevailing doctrine in most of the State courts as well as in the federal tribunals.[2] Besides

---

[7] Edmison v. Asleben (1886), 4 Dak. 145, 27 N. W. 82.

[8] Torreson v. Walla (1902), 11 N. D. 481, 92 N. W. 834.

[9] Landt v. Schneider (1904), 31 Mont. 15, 77 Pac. 307.

[10] Tucker v. Bennett (1905), 15 Okla. 187, 81 Pac. 423.

[1] 16 Cal. App. Dec. 11 (Dec. 27, 1912).

[2] McPherson v. Julius (1903), 17 S. D. 98, 95 N. W. 428; Houson v. Fletcher (1894), 10 Utah 266, 37 Pac. 480; Burke v. McDonald (1890), 2 Idaho 679, 33 Pac. 49; Thompson v. Spray (1887), 72 Cal. 528, 14 Pac. 182; Hewett v. Sullinger (1896), 113 Cal. 547, 45 Pac. 841; Conway v. Hart (1900). 129 Cal. 480, 62 Pac. 44; Richmond Min. Co. v. Rose (1884), 114 U. S. 576; Le Doux v. Forester (1899), 94 Fed. 600; Jupiter

its application to locations inadvertently made larger than the statute permits, it also controls the disposition of overlapping claims.[3] When one claim overlaps another, the junior location is invalid only as to that part which lies within the boundaries of the senior claim. The rule is also applicable to the case where the center line of a location does not coincide approximately with the lode.[4]

The Montana court in two early cases decided prior to the leading case of Richmond Mining Co. v. Rose, cited in the note, have announced a doctrine at variance with that laid down by the California courts.[5] The rule laid down in these Montana cases requires strict accuracy in making locations and declares void all claims including within their boundaries more surface than that allowed by Section 2320 of the Revised Statutes. In the absence of bad faith, this interpretation of the statute seems to be too narrow. The broader view is not only more conducive to a just settlement of controversies involving conflicting mining claims, but expresses the attitude of the federal government towards bona fide locators of public land for mining purposes.

H. M. A.

Mining Law—Extralateral Rights—Construction of Patent.—A case that is sui generis has just been decided by the Supreme Court of Nevada.[1] The plaintiff acquired title to the Sunnyside group of lode locations, and also to the Los Gazabo lode location, which was laid out by other locators across the Sunnyside group as illustrated in the diagram. Plaintiff applied for patent for the entire group, embracing both the Sunnysides and Los Gazabo claims, in a single application. The patent was issued describing each location by exterior boundaries, but without expressly stating that there was any conflict between any of the claims. By platting these descriptions, and also by referring to the total net area of the group as stated in the patent, it was apparent on the face of the patent that this conflict actually existed, and that the patent purported to convey these conflict areas twice, for the patent itself gave no indication as to whether the Los Gazabo or the Sunnyside locations were entitled to this conflict area. Manifestly the conflict area could not be conveyed twice by the government as a part of each conflicting claim. The court held that it was competent to go behind the patent for the purpose of determining priority as be-

---

Min. Co. v. Bodie Con. Min. Co. (1881), 7 Sawyer 96, 11 Fed. 666.

[3] Doe v. Tyler (1887), 73 Cal. 21, 14 Pac. 375; McElligott v. Krogh (1907), 151 Cal. 126, 90 Pac. 823; Richmond Min. Co. v. Rose (1884), 114 U. S. 576.

[4] Southern Cal. Ry. Co. v. O'Donnell (1906), 3 Cal. App. 382, 85 Pac. 932; Harper v. Hill (1911), 159 Cal. 250, 113 Pac. 162.

[5] Hauswirth v. Butcher (1882), 4 Mont. 299, 1 Pac. 714; Leggatt v. Stewart (1883), 5 Mont. 107, 2 Pac. 320.

[1] Round Mountain Mining Co. v. Round Mountain Sphinx Mining Co. et al. (decided Jan. 4, 1913), 129 Pac. 308 (Nev.).